

Pooran Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-18-2006

Reported in : 2006(1)MPHT498

Judge : Ajit Singh and ;Rakesh Saksena, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 61/1992

Appellant : Pooran

Respondent : State of Madhya Pradesh

Advocate for Def. : G.P. Singh, Dy. Govt. Adv.

Advocate for Pet/Ap. : Amod Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

Rakesh Saksena, J.

1. Appellant has filed this appeal challenging the judgment dated 14-10-1991 passed in Sessions Trial No. 207 of 1991 by the Additional Sessions Judge, Khurai, District Sagar, Convicting him for an offence under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life.

2. In brief, prosecution story is that Kiran (deceased) was the wife of appellant. Kiran's sister Kusum used to live with her husband Sardar Nath in Village Mehar. Since about one month appellant and Kiran had come to Village Mehar in search of labour work and were residing in the house of Kusum. On 7-4-1991, at 1.00 P.M., when Kiran was lying on a horizontally placed cement pillar, in front of the house of Kusum, appellant brought an axe from Subbi and assaulted Kiran on her neck with that axe as a result of which she suffered deep injury on the neck. Child Bhag Bai (P.W. 1), sister-in-law of Kusum, saw the incident and informed her mother Ramrani. Ramrani came at the spot and found Kiran lying injured. Ramrani called Kotwar and asked him to lodge the report and along with other persons took Kiran to Hospital, where during the treatment, she died. Tijai Chadar, Kotwar, lodged the report (Ex. P-15) at Police Station, Bandri.

3. Dr. A.K. Chaturvedi of District Hospital, Sagar (P.W. 8) examined the injury of Kiran and found one incised wound 5 cm x 3 cm on the right side of her neck. On the same day, Kiran died. Her dead body was sent for the post mortem examination. Dr. Rajesh Divakar (P.W. 11) performed the post mortem examination and vide his report (Ex. P-16) found one incised wound on the right side of her neck 5 cm x 3 cm in diameter posteriorly and medially. The injury had reached up to trachea at the level of thyroid cutting of the structures including thyroid and adjoining area. Major vessels and trachea were also cut. In his opinion, the lady had died of shock due to excessive blood loss.

4. Appellant was arrested on 10-5-1991 and on his information an axe was recovered. After further requisite investigation the charge-sheet was filed before the Magistrate, who committed the case for the trial.

5. During trial charge for the offence under Section 302 of the Indian Penal Code was framed against the appellant, who abjured the guilt and pleaded false implication. According to him, he was falsely implicated on the move of Sardar Nath, the husband of Kusum Bai as he wanted the deceased to be his wife.

6. Prosecution examined 13 witnesses in support of its case. P.W. 1 Bhag Bai was examined as an eye-witness whereas P.W. 2 Ramrani, P.W. 3 Hari, P.W. 4 Kusum and P.W. 10 Subbi were examined to corroborate the evidence of Bhag

Bai. Dr. A.K. Chaturvedi (P.W. 8) and Dr. Rajesh Divakar (P.W. 11) were examined to furnish medical corroboration of the occurrence. P.W. 5 Balram and P.W. 12 K.P. Tomar, the Investigating Officer, were examined for proving the recovery and investigation.

7. Learned Trial Court relying upon the evidence of sole eye-witness Bhag Bai (P.W. 1) convicted the appellant as aforesaid.

8. We have heard the arguments on behalf of the appellant and the State and have perused the evidence adduced by the prosecution and the material available on the record. The conviction of the appellant is founded solely on the evidence of Bhag Bai (P.W. 1), who happened to be a child witness of about 6 years of age and relative of deceased. Before dilating on the evidence of aforesaid child witness we advert to the law pertaining to the appreciation and evaluation of the evidence of a child witness. It is settled that the evidence of a child witness should be scrutinized with care and caution particularly when it is claimed that the said witness is the only eye-witness and is closely related to the deceased. In *Panchhi and Ors. v. State of Uttar Pradesh : 1998 CriLJ4044*, the Apex Court propounded :--

11....It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring.

12.... Courts have laid down that evidence of a child witness must find adequate corroboration before it is relied on. It is more a rule of practical wisdom than of law.

In the light of the above settled position of law if we examine the evidence of Bhag Bai (P.W. 1), it is seen that she has categorically stated that Kiran was her sister and she was living in her house for last three months. At the time of occurrence appellant had come to her house in the verandah and had inflicted a blow by axe on the neck of Kiran and had run away. At that time, except her, none else was there. She deposed that when the appellant had assaulted Kiran, she was

sleeping on a pillar lying horizontal. She had called her mother and then her mother had called other persons at the spot. Despite lengthy cross-examination nothing was brought out which could have rendered her testimony suspicious. She categorically denied the suggestion that she had deposed on being tutored by any advocate.

9. Her evidence is amply corroborated by the evidence of Ramrani, her mother (P.W. 2), who stated before the Court that about a month prior to the incident, Kiran, who was younger sister of her daughter-in-law, was living in the house of Kusum, which is situated at a short distance from her house. Appellant was also residing with Kiran. She deposed that on the day of occurrence her daughter Bhag Bai came running to her and informed that the appellant had assaulted Kiran by axe and had run away. When she went running, she found Kiran lying in pool of blood in the veranda of Kusum's house. She raised hue and cry and asked her son Hariram to call the Kotwar. When Kotwar came there, she asked her to inform the police. She deposed that her house is situated about 20 yards away from the house of Kusum. Hariram (P.W. 3) deposed that his mother had called him and informed that accused assaulted Kiran by axe and ran away and he himself had seen Kiran lying restless in front of the house of Kusum. He along with Kotwar Tijai had gone to the Police Station where Kotwar had lodged the report. Ramrani and Hariram, however, admitted that they had not seen the accused assaulting Kiran Bai with their own eyes. The same story was narrated by Kusum Bai (P.W. 4) that when she was sleeping inside her house, she heard cries of her mother-in-law Ramrani, she woke up and saw Kiran lying in front of her house through the crevice of the door as it was bolted from outside. When her mother-in-law opened the door, she went to the spot but Kiran could not speak and on the same day she died in the hospital. She deposed that accused/appellant was resident of Village Samastipur and had come to her house about month before the occurrence and had lived with the deceased in her verandah. She also admitted that she did not see as to who assaulted Kiran. The evidence of aforesaid witnesses is further corroborated by the evidence of Tijai Chadar (P.W. 9), the Kotwar of the village, who deposed that he was informed by Hari about the incident and when he went at the spot, he saw Kiran lying injured. There was injury on her neck. Kiran was not able to speak though she was alive at that time. He had then gone to Police

Station and lodged the report (Ex. P-15). Subbi (P.W. 10) a child of 11 years also deposed that the accused had asked him to fetch the axe and he had handed the axe to him just before Kiran was found dead.

10. The evidence of Bhag Bai (P.W. 1) is further corroborated by the evidence of Dr. A.K. Chaturvedi (P.W. 8) and Dr. Rajesh Divakar (P.W. 11), who examined the injuries and performed the post mortem examination of the body of Kiran respectively. Both the doctors had found incised injury measuring 5 cm x 3 cm on the neck of Kiran. Dr. Rajesh Divakar (P.W. 11) deposed that on internal examination he had found that the injury had reached up to trachea and internal organs and the blood vessels were cut. The deceased had died due to shock and excessive haemorrhage. He has deposed that the injury was possible by the axe, which was sent to him for examination.

11. On perusal of the impugned judgment it is gathered that the Trial Judge has minutely and carefully examined and evaluated the evidence of Bhag Bai (P.W. 1) and found it trustworthy to base conviction of the appellant. Even on reappreciating her evidence, we find that Bhag Bai was able to understand the questions and answered them rationally and her evidence appeared to be natural and reliable and besides that it finds corroboration by the evidence of other witnesses, who had reached the place of occurrence immediately after the occurrence and also by the medical evidence. Even on critical scrutiny there appeared no likelihood of her being tutored. In our considered opinion it is amply proved that the appellant had committed the murder of deceased.

12. As far as the defence of the appellant is concerned, it does not appear probable and reliable. The evidence of D.W. 1 Kaman Ravat, father of the appellant, appears to be self contradictory. His statement that Kusum's husband Sardar Nath wanted to keep Kiran (deceased) as his wife, is not borne out from the evidence. This witness at one place deposed that he knew that Sardar Nath had taken his daughter-in-law to Village Mehar, but he and his son had not gone to fetch her and when he got the information about the death of his daughter-in-law, he and his son were at his house whereas at another place he admitted that at the time of the incident his son had taken his daughter-in-law Kiran to Village Mehar

for labour work where he had lived for about a month and had come back alone. He admitted that Kiran did not want to come back and wanted to live there for some more time for harvesting work. The Trial Judge has duly appreciated the evidence of this witness and rightly disbelieved it.

13. On due consideration of the facts and circumstances of the case and for the foregoing reasons we are of the opinion that the learned Trial Court has committed no error in appreciating the evidence by the prosecution, calling for any interference in the finding of conviction arrived by it.

14. Accordingly, we find no merit in this appeal and the same is dismissed.

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